

1-1 By: Fletcher (Senate Sponsor - Duncan) H.B. No. 1711
 1-2 (In the Senate - Received from the House April 15, 2013;
 1-3 April 17, 2013, read first time and referred to Committee on State
 1-4 Affairs; May 8, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; May 8, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 1711 By: Duncan

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to barratry.
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-23 SECTION 1. Section 82.065(b), Government Code, is amended
 1-24 to read as follows:
 1-25 (b) Any contract for legal services is voidable by the
 1-26 client if it is procured as a result of conduct violating Section
 1-27 38.12(a) or (b), Penal Code, [the laws of this state] or Rule 7.03
 1-28 of the Texas Disciplinary Rules of Professional Conduct of the
 1-29 State Bar of Texas, regarding barratry by attorneys or other
 1-30 persons.
 1-31 SECTION 2. Section 82.0651, Government Code, is amended by
 1-32 amending Subsections (a), (b), and (c) and adding Subsection (g) to
 1-33 read as follows:
 1-34 (a) A client may bring an action to void a contract for legal
 1-35 services that was procured as a result of conduct violating Section
 1-36 38.12(a) or (b), Penal Code, [the laws of this state] or Rule 7.03
 1-37 of the Texas Disciplinary Rules of Professional Conduct of the
 1-38 State Bar of Texas, regarding barratry by attorneys or other
 1-39 persons, and to recover any amount that may be awarded under
 1-40 Subsection (b). A client who enters into a contract described by
 1-41 this subsection may bring an action to recover any amount that may
 1-42 be awarded under Subsection (b) even if the contract is voided
 1-43 voluntarily.
 1-44 (b) A client who prevails in an action under Subsection (a)
 1-45 shall recover from any person who committed barratry:
 1-46 (1) all fees and expenses paid to that person under the
 1-47 contract;
 1-48 (2) the balance of any fees and expenses paid to any
 1-49 other person under the contract, after deducting fees and expenses
 1-50 awarded based on a quantum meruit theory as provided by Section
 1-51 82.065(c);
 1-52 (3) actual damages caused by the prohibited conduct;
 1-53 ~~and~~
 1-54 (4) a penalty in the amount of \$10,000; and
 1-55 (5) reasonable and necessary attorney's fees.
 1-56 (c) A person who was solicited by conduct violating Section
 1-57 38.12(a) or (b), Penal Code, [the laws of this state] or Rule 7.03
 1-58 of the Texas Disciplinary Rules of Professional Conduct of the
 1-59 State Bar of Texas, regarding barratry by attorneys or other
 1-60 persons, but who did not enter into a contract as a result of that

2-1 conduct, may file a civil action against any person who committed
2-2 barratry.

2-3 (g) The expedited actions process created by Rule 169, Texas
2-4 Rules of Civil Procedure, does not apply to an action under this
2-5 section.

2-6 SECTION 3. Sections 38.12(d) and (e), Penal Code, are
2-7 amended to read as follows:

2-8 (d) A person commits an offense if the person:

2-9 (1) is an attorney, chiropractor, physician, surgeon,
2-10 or private investigator licensed to practice in this state or any
2-11 person licensed, certified, or registered by a health care
2-12 regulatory agency of this state; and

2-13 (2) with the intent to obtain professional employment
2-14 for the person or for another, provides or knowingly permits to be
2-15 provided to an individual who has not sought the person's
2-16 employment, legal representation, advice, or care a written
2-17 communication or a solicitation, including a solicitation in person
2-18 or by telephone, that:

2-19 (A) concerns an action for personal injury or
2-20 wrongful death or otherwise relates to an accident or disaster
2-21 involving the person to whom the communication or solicitation is
2-22 provided or a relative of that person and that was provided before
2-23 the 31st day after the date on which the accident or disaster
2-24 occurred;

2-25 (B) concerns a specific matter and relates to
2-26 legal representation and the person knows or reasonably should know
2-27 that the person to whom the communication or solicitation is
2-28 directed is represented by a lawyer in the matter;

2-29 (C) ~~[concerns an arrest of or issuance of a~~
2-30 ~~summons to the person to whom the communication or solicitation is~~
2-31 ~~provided or a relative of that person and that was provided before~~
2-32 ~~the 31st day after the date on which the arrest or issuance of the~~
2-33 ~~summons occurred;~~

2-34 ~~[(D)]~~ concerns a lawsuit of any kind, including
2-35 an action for divorce, in which the person to whom the communication
2-36 or solicitation is provided is a defendant or a relative of that
2-37 person, unless the lawsuit in which the person is named as a
2-38 defendant has been on file for more than 31 days before the date on
2-39 which the communication or solicitation was provided;

2-40 (D) ~~[(E)]~~ is provided or permitted to be provided
2-41 by a person who knows or reasonably should know that the injured
2-42 person or relative of the injured person has indicated a desire not
2-43 to be contacted by or receive communications or solicitations
2-44 concerning employment;

2-45 (E) ~~[(F)]~~ involves coercion, duress, fraud,
2-46 overreaching, harassment, intimidation, or undue influence; or

2-47 (F) ~~[(G)]~~ contains a false, fraudulent,
2-48 misleading, deceptive, or unfair statement or claim.

2-49 (e) For purposes of Subsection (d)(2)(D) ~~[(d)(2)(E)]~~, a
2-50 desire not to be contacted is presumed if an accident report
2-51 reflects that such an indication has been made by an injured person
2-52 or that person's relative.

2-53 SECTION 4. (a) Section 82.065(b), Government Code, as
2-54 amended by this Act, applies only to a contract procured as a result
2-55 of conduct described by that subsection, as amended by this Act,
2-56 occurring on or after the effective date of this Act. A contract
2-57 procured as a result of conduct occurring before the effective date
2-58 of this Act is governed by the law applicable to the contract
2-59 immediately before the effective date of this Act, and that law is
2-60 continued in effect for that purpose.

2-61 (b) Except as provided by this section, Section 82.0651,
2-62 Government Code, as amended by this Act, applies only to an action
2-63 concerning a contract procured as a result of conduct described by
2-64 Section 82.0651(a), Government Code, as amended by this Act, that
2-65 occurs on or after the effective date of this Act. An action
2-66 concerning a contract procured as a result of conduct that occurred
2-67 before the effective date of this Act is governed by the law
2-68 applicable to the contract immediately before the effective date of
2-69 this Act, and that law is continued in effect for that purpose.

3-1 (c) Section 82.0651(g), Government Code, as added by this
3-2 Act, applies to an action:

3-3 (1) commenced on or after the effective date of this
3-4 Act; or

3-5 (2) pending on the effective date of this Act and in
3-6 which the trial, or any new trial or retrial following motion,
3-7 appeal, or otherwise, begins on or after the effective date of this
3-8 Act.

3-9 SECTION 5. This Act takes effect September 1, 2013.

* * * * *

3-10